

**IN THE COURT OF RAKESH KUMAR RAMPURI,
METROPOLITAN MAGISTRATE (NI ACT) KARKARDOOMA COURTS:
SHAHDARA, DELHI.**

JUDGMENT U/S 355 Cr.PC

- a. Serial No. of the case : PP-2138/06
- b. Date of the commission of the offence : 13/07/2006
- c. Name of the complainant Hemant Deepak
- d. Name of accused person and his parentage: Sachin Jain,
and residence S/o Sh. Ashok Jain,
R/o 1/3192, Ram Nagar,
Mandoli Road, Shahdara, Delhi-32.
- e. Offence complained of : Dishonoring of cheque
for insufficient funds.
- f. **Plea of the accused and his examination (if any):** **Not guilty**
because no loan taken from
the complainant and cheque
in question not issued in
favour of anyone.
- g. **Final Order** : **Held not guilty.**
Acquitted.
- h. Order reserved on : 09.09.2013.

i. **Order pronounced on** : **17.09.2013**

Brief reasons for decision:-

1. **The brief facts of the complainant's case:-** Complainant and accused were having very good cordial friendship with each other and accused approached the complainant in the month of January 2006 for a friendly loan of Rs. 48,000/- for few days on some urgent basis. Complainant claimed that on 08.01.2006, he had advanced friendly cash loan of Rs. 48,000/- to the accused with promise of accused for returning the same within 15 days. Complainant further claimed that after a long hardship and search accused was found on 10.02.2006 and he issued a cheque bearing number 532293 dt. 10.02.2006 for an amount of Rs. 48,000/- Ex. CW1/1 (hereinafter referred to cheque in question) for repayment of aforesaid loan. It is case of complainant that cheque in question had returned unpaid vide cheque returning memo Ex. CW1/7 dt. 21.06.2006 with remarks "insufficient funds. It is also case of complainant that accused did not pay cheque amount within stipulated time despite service of legal demand notice Ex. CW1/8 dt. 28.06.2006. Hence, aggrieved from the aforesaid conduct of accused, complainant filed the present complaint case u/s 138 of NI Act on 20.07.2006.

2. Notice of accusation u/s 251 Cr.P.C was served on accused on 15.02.2008 to which he pleaded not guilty and claimed trial. Complainant (CW1) examined and cross examined extensively by counsel for accused on

02.05.2012. Statement of accused u/s 313 Cr.P.C was recorded on 06.07.2012. Ashok Jain (DW1), handwriting expert Sayed Faisal Huda (DW3) and accused himself (DW2) u/s 315 Cr.P.C were examined as defence witnesses. Both counsel made oral argument in details. Counsel for complainant also filed written argument on record.

3. **Defence version of accused:-** Accused denied signing of his cheque in question. Accused further denied writing of any content appearing on cheque in question. Accused also denied taking of any loan from the complainant. Accused further claimed that he had not received any legal demand notice issued by the complainant. Accused pleaded that his friend namely Sonu was working at the shop of complainant and used to utilize his bike. Accused further pleaded that two cheques including cheque in question were kept in the box of his bike and he forgot to take the same back from box of bike.

4. I have given thoughtful consideration to respective submissions of both counsels and made careful perusal of entire record of this case.

5. Complainant (CW1) admitted that Sonu had worked with him for 10-12 years since 1999. Complainant also admitted that he did not take any cheque or pronote or written document from accused at the time of transaction in question. Complainant (CW1) stated that accused handed over blank signed

cheque to him and he filled the same at the saying of accused. Complainant also stated that he had demanded 12 % interest from accused in his legal demand notice. Complainant did not deny suggestion as to aforesaid Sonu used to come on the motorcycle of accused. It was suggested by counsel for accused during cross examination of complainant that present complaint case has been filed against accused to take revenge from his father as complainant had some dispute with father of accused. Complainant admitted that there is correction / cutting without signature of accused. Complainant (CW1) during his cross examination claimed that accused had demanded Rs. 60,000/- in January 2006, but he had given Rs. 20,000/- on 08.01.2006 and Rs. 28,000/- on 09.01.2006. Here, complainant did not explain as to why he did not mention aforesaid vital fact in his legal demand notice, complaint and his affidavit, which were earliest stages for stating material truth. Complainant further failed to explain as to why he did not take any written receipt or pronote of security from the accused apart from cheque in question particularly when accused was traced after much alleged hardship of complainant. Complainant admitted that he did not mentioned loan in question in his any ITR. Complainant also admitted that two signature of accused and other contents of cheque had been written with two different pens. Here, complainant has to explain why cheque in question had not been filled by the accused or by him in presence of accused when due amount and payee were known to both parties. Complainant stated that loan of Rs. 48,000/- was arranged by him in cash from his home. Here, as per section 259

SS of Income Tax Act, no cash transaction of more than Rs. 20,000/- should have taken place. Complainant failed to explain how he arranged Rs. 28,000/- within one day for advancing the same on 09.01.2006, if same was at his disposal at his home.

6. Father of accused Sh. Ashok Jain (DW1) testified that he and complainant had some dispute and he is not aware of any loan taken by his accused son from the complainant. Ld. Counsel for accused had already suggested during cross examination of complainant that he had filed present complaint case to take revenge from the father of accused.

7. Handwriting expert Sh. Sayed Faisal Huda (DW3) stated that after examination of disputed and admitted signatures of accused Sachin Jain, he is of considered view that signature appearing on cheque in question had not been put by the accused. Ld. Counsel for complainant contended that aforesaid expert has filed unscientific and favourable report as he has been engaged by accused. However, court is of considered opinion that the job of handwriting expert is to assist the court in reaching just conclusion of case in hand by furnishing valuable scientific inputs and no opinion of any expert is binding on the court. The opinion of any expert has to be evaluated in proper prospective in view of facts and circumstances of the case in hand. Here, it has been consistent plea of accused that he did not sign cheque in question and same had

been kept in the box of his bike which was used by his friend namely Sonu, who was also admitted employee of complainant.

8. Criminal law has to be construed strictly as it curtails life and liberty of accused. Once, accused managed to cast probable doubt over the veracity of case of complainant, it is unalienable duty of complainant to prove his case beyond all shades of reasonable doubts as matter of facts. Complainant can not be allowed to prove his case by taking benefit in the lacuna of defence. Moreover, court is mindful of basic tenant of criminal jurisprudence as to benefit of any reasonable doubt has to be given to the accused. It is also settled position of law if two possible versions, the version favouring the innocence of accused should be opted by the court.

9. In view of above discussions, court is of considered opinion that accused has created reasonable doubt over the veracity of story of complainant and complainant failed to prove his case beyond all reasonable doubts thereafter. In upshot of aforesaid discussion, I have no hesitation in ordering acquittal of accused for offence u/s 138 of NI Act in this case.

**ANNOUNCED IN THE OPEN COURT
ON 17th Day of September, 2013**

**(Rakesh Kumar Rampuri)
MM, NI Act, (East)
KKD Courts, Delhi.**